

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 00-6009-CIV-DIMITROULEAS
MAGISTRATE JUDGE SORRENTINO

ROSS JAY LAWSON,

Plaintiff,

v.

KEN JENNE, WILLIAM
HITCHCOCK, BROWARD
COUNTY DEPARTMENT OF
CORRECTIONS AND REHAB.,

Defendants.

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FILED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
JAN 2 1999

DEFENDANTS' MOTION TO STRIKE PLAINTIFFS'
AFFIDAVITS SUBMITTED IN RESPONSE TO
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

The Defendants, KEN JENNE, WILLIAM HITCHCOCK and BROWARD COUNTY DEPARTMENT OF CORRECTIONS AND REHABILITATION, by and through their undersigned counsel, files this Motion to Strike Affidavits, and in support thereof states:

1. Plaintiff submitted four affidavits in support of his Response to Defendants' Motion for Summary Judgment.

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12/11/00

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2. The affidavits of John Judd, Michael Consiglio, Terrell Sessions and Jeffrey Gottman are not based upon personal knowledge, and as such, do not comply with Fed.R.Civ.P. 56(e).

3. The affidavit of John Judd improperly contain hearsay, therefore, making it invalid.

4. Said affidavits should be stricken as they are not in compliance with Fed.R.Civ.P. 56(e) and controlling Eleventh Circuit case law.

MEMORANDUM OF LAW

Story v. Sunshine Foliage World, Inc., 14 Fla. Law W. Fed. D 39 (2000), provides the basis for determining the content of affidavits submitted in conjunction with Fed.R.Civ.P. 56(e). Story sets forth that affidavits submitted to the court must be based upon personal knowledge and must set forth facts which would be admissible into evidence. Additionally, affidavits may not contain hearsay or conclusory arguments. In accordance with Fed.R.Civ.P. 56(e), an affidavit which contains conclusory arguments must be stricken.

The affidavit of Terrell Sessions states in paragraph five, "... Christian literature and Christian publications were the only ones allowed into the jail..." Additionally, paragraph six states, "After March 1999 the jail allowed religious publication for inmates but only religious publications..." Mr. Sessions' affidavit is not based upon

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personal knowledge as it would be impossible for him to know that Christian publications were the only ones permitted in the jail.

The affidavits of John Judd and Michael Consiglio are factually similar. Mr. Judd states in paragraph six, "From my date of arrest until 3/99, the B.C.D.O.C.A.R. did not allow inmates to receive publications of any kind from any outside source." Mr. Consiglio states in paragraph four, "...No other publications of any kind were allowed to enter the jail unless they were Christian...". Mr. Judd and Mr. Consiglio cannot personally have knowledge of the facts contained within their affidavits.

Moreover, John Judd's affidavit contains hearsay in that he states in paragraph eleven (11) that he has heard what certain deputies have said to make fun of Plaintiff.

Lastly, all of the affidavits except for Jeffrey Gottman's, contain conclusory arguments. Each affidavit states that the jail did not permit certain publications of any kind to enter the jail. Then, each affidavit states that only religious publications were permitted. These statement are merely conclusory arguments as each affiant does not have personal knowledge of what the jail did or did not permit.

As Plaintiff has submitted affidavits which are not in compliance with Fed.R.Civ.P. 56(e) and controlling case law, said affidavits should be stricken.

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WHEREFORE, Defendants' respectfully request this Honorable Court strike Plaintiff's affidavits submitted in support of his Response to Defendants' Motion for Summary Judgment.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via U.S. Mail this 8th day of December, 2000 to: **ROSS JAY LAWSON**, Pro Se Plaintiff, FL 97-9905, Post Office Box 9356, Fort Lauderdale, Florida 33310.

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